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US EPA RECORDS CENTER REGION 5



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May 2, 2011

**VIA E-MAIL & US MAIL**

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direct dial: 310.442.8885  
jcermak@bakerlaw.com

Linda Nachowicz, Chief  
Emergency Response Branch 2  
United States Environmental Protection Agency  
Region 5  
77 W. Jackson Boulevard  
Chicago, IL 60604-3590

Re: Proposed Removal Action at the Portage Creek Portion of the Allied  
Paper, Inc./Portage Creek/Kalamazoo River Superfund Site (the "Site")

Dear Ms. Nachowicz:

On behalf of International Paper Company ("International Paper") this responds to your letter of April 18, 2011 (the "Letter") in which the United States Environmental Protection Agency ("EPA") requests International Paper, as well as five other companies, to "agree to conduct" a "time-critical removal action" ("TCRA") in Portage Creek (the "Creek"). The Letter also states that "EPA is willing to discuss with you the entry of an appropriate administrative consent agreement under which you would perform or finance response activities and reimburse EPA for its oversight costs." It is International Paper's understanding (based on the Letter and its discussions with EPA) that the TCRA would address PCBs in sediment in the Creek. As you know, the Site has been the subject of investigation and remediation activities since the 1980s by the State of Michigan, as well as EPA and certain of the Letter recipients, such as Georgia-Pacific ("GP"). International Paper by contrast first received notice of the Site in a general notice letter from EPA dated November 24, 2010 (the "General Notice Letter"). It was through the General Notice Letter (and a contribution lawsuit that GP subsequently filed) that International Paper first became aware that St. Regis, a predecessor company, may have held an interest in property on which or near where the Allied Paper Mill was located. EPA's General Notice Letter simply states that "[s]pecifically EPA has reason to believe that International Paper is a corporate successor to St. Regis Paper Company and Bryant Paper Company, which were owners and or operators of paper mills that disposed of PCBs and PCB-containing materials at the Site."

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Since the receipt of the General Notice Letter (and the filing of the contribution action by GP), International Paper has diligently sought information to determine its connection to the Site, including whether St. Regis owned or operated any facility at the Site from which PCBs have been released and at a time when PCBs were disposed of from any such facility. As EPA knows, although International Paper has received some limited technical information from EPA, primarily from the 1980s and early 1990s, it has received no information from EPA regarding St. Regis' involvement with the Site, and has received almost no information on Allied Paper's operations at the Site during relevant time periods. EPA has promised to provide International Paper with further information. In addition to requesting information from EPA, International Paper has diligently investigated other potential sources of information. These efforts have included: (a) requesting operational records on the Allied Paper Mill (through EPA) from the trustee of the Environmental Custodial Trust that currently owns the Allied Paper Mill property; (b) contacting bankruptcy, environmental and in-house counsel for Allied Paper requesting operational records for Allied Paper; (c) requesting operational records from GP; and (d) searching International Paper's historical archives.

Based on the limited information available to International Paper to date, it appears that St. Regis may have operated certain facilities at the Bryant Paper Mill until 1956, and may have owned certain discreet portions of real property at or near the Allied Paper Mill property until 1966. Assuming for argument's sake the foregoing is correct, this would appear to support the position that St. Regis did not own or operate a mill from which PCBs were discharged into the Creek. Based on information available in contribution litigation involving the Fox River Superfund Site located in Green Bay, Wisconsin and adjoining areas, it is International Paper's understanding that carbonless copy paper ("CCP") from which the PCBs in the Creek apparently originate may first have been produced in 1954 or 1955 at an Appleton Coated Paper Company mill on the Fox River, and that the off-site disposal and transport of broke from CCP may not have begun until 1956 or later. 1956 is the year St. Regis apparently discontinued any operations at or near the Allied Paper Mill property. Even assuming broke from CCP was first arranged for off-site transfer in 1954 or 1955, it seems more likely that such broke at that time would have been transferred or provided to the numerous mills then operating near the Appleton Coated Paper Company mill on the Fox River in Wisconsin, rather than to the more distant mills on the Kalamazoo River and its tributaries.

It appears that Allied Paper operated at the Site until at least 1971. At present International Paper has no knowledge as to when Allied Paper may have first recycled CCP at the Allied Paper Mill property, and whether any recycling may have begun before St. Regis divested any real property interests it may have had at or near the Allied Paper Mill property. Moreover, for the brief period between 1956 and 1966, St. Regis's only potential connection to the Site was as the alleged lessor of discrete portions of real property at or near the Allied Paper Mill property.

Thus, even with the limited information available to date, it is evident that St. Regis is an unlikely source of the PCBs in the Creek. Significant funds for the cleanup of the Creek, however, have been provided to EPA on behalf of Allied Paper. As you know, effective April 30, 2010, Millennium Holdings, Inc., as successor to Allied Paper and related entities, entered into a settlement with the United States pursuant to which,



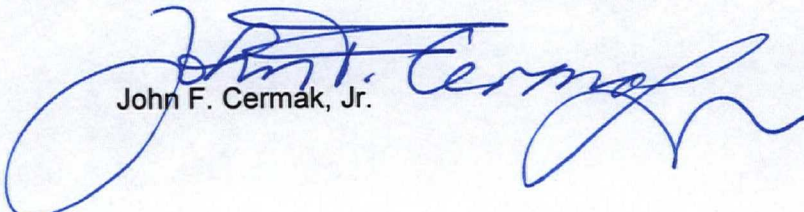
among other things, Millennium and its parent company Lyondell, made several payments, including a cash payment of \$49,549,379 to fund cleanup of contamination at or from the Allied Paper Mill property. We understand from a January 7, 2010 meeting with EPA representatives that those funds have been placed into a site-specific "special account."

It is International Paper's understanding that EPA contends that the PCBs in the Creek sediment originate from the operations at the Allied Paper Mill. In addition, it appears that Allied Paper was the sole operator of its facility during the period CCP broke was allegedly accepted there. Assuming that it correct, then where at the Site would it be more appropriate to spend the Millennium settlement proceeds than in the Creek for the TCRA? It is here that the dedicated funds received on account of the Allied Paper's ownership and operation of the Allied Paper Mill property would be most clearly spent on contamination contributed by Allied Paper.

In view of the foregoing, International Paper is not presently in a position where it can in good faith agree to perform the proposed TCRA for the Creek and urges EPA to use funds in the special account to conduct the TCRA.

Nonetheless, we have contacted Leslie Kirby-Miles to schedule a meeting between representatives of EPA and International Paper to discuss this matter further. Please call me at (310) 442-8864 if you have any questions regarding the above response.

Sincerely,

  
John F. Cermak, Jr.

JFC:nlw

cc: Leslie Kirby-Miles  
Steven J. Ginski  
Ryan Dahl